Supporting Statement for
FERC-549B, Gas Pipeline Rates: Capacity Information

As Proposed In Docket No. RM08-1-000
(Promotion of a More Efficient Release Market)
(Notice of Proposed Rulemaking Issued November 15, 2007,
Published November 26, 2007, 72 FR 65916)

The Federal Energy Regulatory Commission (Commission) requests Office of Management and Budget (OMB) review and approval of **FERC-549B, Gas Pipeline Rates: Capacity Information** is an existing data collection that implements part 284 of FERC's regulations. These revisions are intended to reflect changes in the market for short-term transportation services on pipelines and to improve the efficiency of the Commission's capacity release mechanism. The Commission is proposing to permit market based pricing for short-term capacity releases and to facilitate asset management arrangements by relaxing the Commission's prohibition on tying and on its bidding requirements for certain capacity releases.

The NOPR was issued on November 15, 2007, in Docket No. RM08-1-000. FERC-549B (OMB Control No. 1902-0169) was recently approved by OMB through November 30, 2010. Although the Commission is taking the steps to enhance competition in the secondary capacity release market and increase shipper options, it is not modifying its existing reporting requirements in section 284.13 of its regulations. The current burden estimates for FERC-549B will be unaffected by this rule and for that reason; the Commission will send a copy of this proposed rule to OMB for informational purposes only.

All of the proposed changes in the subject NOPR are provided for under sections 4, 5 and 16 of the Natural Gas Act (NGA).

Background

The Commission adopted its capacity release program as part of the restructuring of natural gas pipelines required by Order No. 636.[1] In Order No. 636, the Commission sought to

1 Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 Fed. Reg. 13,267 (April 16, 1992), FERC Stats. and Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,939 (April 8, 1992); order on reh'g, Order No. 636-A., 57 Fed. Reg. 36,128 (August 12, 1002), FERC Stats. and Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,950 (August 3, 1992); order on reh'g, Order No. 636-B, 57 Fed. Reg. 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992); notice of denial of reh'g, 62 FERC ¶ 61,007 (1993); aff'd in part, vacated and remanded in part, United Dist. Companies v.

foster two primary goals. The first goal was to ensure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in a competitive, national market to transact the most efficient deals possible. The second goal was to ensure consumers have "access to an adequate supply of gas at a reasonable price."[2]

To accomplish these goals, the Commission sought to maximize the availability of unbundled firm transportation service to all participants in the gas commodity market. The linchpin of Order No. 636 was the requirement that pipelines unbundle their transportation and storage services from their sales service, so that gas purchasers could obtain the same high quality firm transportation service whether they purchased from the pipeline or another gas seller. In order to create a transparent program for the reallocation of interstate pipeline capacity to complement the unbundled, open access environment created by Order No. 636, the Commission also adopted a comprehensive capacity release program to increase the availability of unbundled firm transportation capacity by permitting firm shippers to release their capacity to others when they were not using it.[3]

The Commission reasoned that the capacity release program would promote efficient load management by the pipeline and its customers and would, therefore, result in the efficient use of firm pipeline capacity throughout the year. It further concluded that, "because more buyers will be able to reach more sellers through firm transportation capacity, capacity reallocation comports with the goal of improving nondiscriminatory, open access transportation to maximize the benefits of the decontrol of natural gas at the wellhead and in the field."[4]

In Order No. 636, the Commission expressed concerns regarding its ability to ensure that firm shippers would reallocate their capacity in a non-discriminatory manner to those who placed the highest value on the capacity up to the maximum rate. The Commission noted that

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FERC, 88 F.3d 1105 (D.C. Cir. 1996); order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

2 Order No. 636 at 30,393 (citations omitted).

3 In brief, under the Commission's capacity release program, a firm shipper (releasing shipper) sells its capacity by returning its capacity to the pipeline for reassignment to the buyer (replacement shipper). The pipeline contracts with, and receives payment from, the replacement shipper and then issues a credit to the releasing shipper. The replacement shipper may pay less than the pipeline's maximum tariff rate, but not more. 18 CFR § 284.8(e) (2007). The results of all releases are posted by the pipeline on its Internet Web site and made available through standardized, downloadable files.

4 Order No. 636 at 30,418.

prior to Order No. 636; it authorized some pipelines to permit their shippers to "broker" their capacity to others. Under such capacity brokering, firm shippers were permitted to assign their capacity directly to a replacement shipper, without any requirement that the brokering shipper post the availability of its capacity or allocate it to the highest bidder.[5] However, in Order No. 636, the Commission found "there [were] too many potential assignors of capacity and too many different programs for the Commission to oversee capacity brokering."[6]

The Commission sought to ensure that the efficiencies of the secondary market were not frustrated by unduly discriminatory access to the market.[7] Therefore, the Commission replaced capacity brokering with the capacity release program designed to provide greater assurance that transfers of capacity from one shipper to another were transparent and not unduly discriminatory. This assurance took the form of several conditions that the Commission placed on the transfer of capacity under its new program.

First, the Commission prohibited private transfers of capacity between shippers and, instead, required that all release transactions be conducted through the pipeline. Therefore, when a releasing shipper releases its capacity, the replacement shipper must enter into a contract directly with the pipeline, and the pipeline must post information regarding the contract, including any special conditions.[8] In order to enforce the prohibition on private transfers of capacity, the Commission required that a shipper must have title to any gas that it ships on the pipeline.[9]

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5 See Algonquin Gas Transmission Corp., 59 FERC ¶ 61,032 (1992).

6 Order No. 636 at 30,416.

7 Order No. 636-A at 30,554.

8 Order No. 636 emphasized:

> The main difference between capacity brokering as it now exists and the new capacity release program is that under capacity brokering, the brokering customer could enter into and execute its own deals without involving the pipeline. Under capacity releasing, all offers must be put on the pipeline's electronic bulletin board and contracting is done directly with the pipeline. Order No. 636 at 30, 420 (emphasis in original).

9 As the Commission subsequently explained in Order No. 637, "the capacity release rules were designed with [the shipper-must-have-title] policy as their foundation," because, without this requirement, "capacity holders could simply transport gas over the pipeline for another entity." Regulation of Short-Term Natural Gas Transportation Services and Regulation

Second, the Commission determined that the record of the proceeding that led to Order No. 636 did not reflect that the market for released capacity was competitive. The Commission reasoned that the extent of competition in the secondary market may not be sufficient to ensure that the rates for released capacity will be just and reasonable. Therefore, the Commission imposed a ceiling on the rate that the releasing shipper could charge for the released capacity.[10] This ceiling was derived from the Commission's estimate of the maximum rates necessary for the pipeline to recover its annual cost-of-service revenue requirement, which the Commission prorated over the period of each release. [11]

Third, the Commission required that capacity offered for release at less than the maximum rate must be posted for bidding, and the pipeline must allocate the capacity "to the person offering the highest rate (not over the maximum rate)."[12] The Commission permitted the releasing shipper to choose a pre-arranged replacement shipper who can retain the capacity by matching the highest bid rate. The bidding requirement, however, does not apply to releases of 31 days or less or to any release at the maximum rate. But all releases, whether or not subject to bidding, must be posted.[13]

Finally, the Commission prohibited tying the release of capacity to any extraneous conditions so that the releasing shippers could not attempt to add additional terms or conditions

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of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. ¶ 31,091 at 31,300, clarified, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, reh'g denied, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir. 2002), order on remand, 101 FERC ¶ 61,127 (2002), order on reh'g, 106 FERC ¶ 61,088 (2004), aff'd sub nom. American Gas Ass'n v. FERC, 428 F.3d 255 (D.C. Cir. 2005). See section V below for a further explanation of the shipper-must-have-title requirement.

10 Order No. 636 at 30,418; Order No. 636-A at 30,560.

11 Order No. 637 at 31,270 -71.

12 18 CFR § 284.8(e) (2007) provides in pertinent part that "[t]he pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms or conditions of the release."

13 18 CFR §284.8(h)(1) provides that a release of capacity for less than 31 days, or for any term at the maximum rate, need not comply with certain notification and bidding requirements, but that such release may not exceed the maximum rate. Notice of the release "must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences."

to the release of capacity. The Commission articulated the prohibition against the tying of capacity in Order No. 636-A, where it stated:

> The Commission reiterates that *all* terms and conditions for capacity release must be posted and non-discriminatory and must relate solely to the details of acquiring transportation on the interstate pipelines. Release of capacity cannot be tied to any other conditions. Moreover, the Commission will not tolerate deals undertaken to avoid the notice requirements of the regulations. Order No. 636-A at 30, 559 (emphasis in the original).

Subsequent to the Commission's adoption of its capacity release program in Order No. 636, the Commission conducted two experimental programs to provide more flexibility in the capacity release market. In 1996, the Commission sought to establish an experimental program inviting individual shipper and pipeline applications to remove price ceilings related to capacity release.[14] The Commission recognized that significant benefits could be realized through removal of the price ceiling in a competitive secondary market. Removal of the ceiling permits more efficient capacity utilization by permitting prices to rise to market clearing levels and by permitting those who place the highest value on the capacity to obtain it.[15]

In 2000, in Order No. 637, the Commission conducted a broader experiment in which the Commission removed the rate ceiling for short-term (less than one year) capacity release transactions for a two-year period ending September 30, 2002. In contrast to the experiment that it conducted in 1996, in the Order No. 637 experiment the Commission granted blanket authorization in order to permit all firm shippers on all open access pipelines to participate. The Commission stated that it undertook this experiment to improve shipper options and market efficiency during peak periods. The Commission reasoned that during peak periods, the maximum rate cap on capacity release transactions inhibits the creation of an effective transportation market by preventing capacity from going to those that value it the most and therefore the elimination of this rate ceiling would eliminate this inefficiency and enhance shipper options in the short-term marketplace.[16]

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14 Secondary Market Transactions on Interstate Natural Gas Pipelines, Proposed Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions, 61 Fed. Reg. 41401 (Aug. 8, 1996), 76 FERC ¶ 61,120, order on reh'g, 77 FERC ¶ 61,183 (1996).

15 77 FERC ¶61,183 (1996) at 61,699.

16 Order No. 637at 31,263. The Commission also explained why it was lifting the price cap on an experimental basis, instead of permanently, stating:

While the removal of the price cap is justified based on the record in this

Upon an examination of pricing data on basis differentials between points,[17] the Commission found that the price ceiling on capacity release transactions limited the capacity options of short-term shippers because firm capacity holders were able to avoid price ceilings on released capacity by substituting bundled sales transactions at market prices (where the market place value of transportation is an implicit component of the delivered price). As a consequence, the Commission determined that the price ceilings did not limit the prices paid by shippers in the short-term market as much as the ceilings limit transportation options for shippers. In short, the Commission found that the rate ceiling worked against the interests of short-term shippers, because with the rate ceilings in place, a shipper looking for short-term capacity on a peak day who was willing to offer a higher price in order to obtain it, could not legally do so; this reduced its options for procuring short-term transportation at the times that it needed it most.[18] Throughout this experiment, the Commission retained the rate ceiling for firm and interruptible capacity available from the pipeline as well as long-term capacity release transactions.

On April 5, 2002, the United States Court of Appeals for the District of Columbia Circuit, in Interstate Natural Gas Association of America v. FERC,[19] upheld the Commission's experimental price ceiling program for short-term capacity release transactions as set forth in Order No. 637.[20] The court found that the Commission's "light handed" approach to the

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rulemaking, the Commission recognizes that this is a significant regulatory change that should be subject to ongoing review by the Commission and the industry. No matter how good the data suggesting that a regulatory change should be made, there is no substitute for reviewing the actual results of a regulatory action. The two year waiver will provide an opportunity for such a review after sufficient information is obtained to validly assess the results. Due to the variation between years in winter temperatures, the waiver will provide the Commission and the industry with two winter's worth of data with which to examine the effects of this policy change and determine whether changes or modifications may be needed prior to the expiration of the waiver. Order No. 637 at 31,279.

17 Among other things, the data showed that the value of pipeline capacity, as shown by basis differentials, was generally less than the pipelines' maximum interruptible transportation rates, except during the coldest days of the year, and capacity release prices also averaged somewhat less than pipelines' maximum interruptible rates.

18 Order No. 637 at 31,282.

19 285 F.3d 18 (D.C. Cir. 2002) (INGAA)

20 Specifically, the court found that: "[g]iven the substantial showing that in this context

regulation of capacity release prices was, given the safeguards that the Commission had imposed, consistent with the criteria set forth in Farmers Union Cent. Exch. v. FERC.[21] The court found that the Commission made a substantial record for the proposition that market rates would not materially exceed the "zone of reasonableness" required by Farmers Union. The court also found that the Commission's inference of competition in the capacity release market was well founded, that the price spikes shown in the Commission's data were consistent with competition and reflected scarcity of supply rather than monopoly power, and that outside of such price spikes, the rates were well below the estimated regulated price.[22]

Subject NOPR (Docket No. RM08-1-000)

On November 15, 2007 in Docket No. RM08-1-000, FERC issued a Notice of Proposed Rulemaking that would permit market based pricing for short-term capacity releases and facilitate Asset Management Agreements or AMAs (see item no. 8 below) by relaxing the Commission's prohibition on tying and its bidding requirements for certain capacity releases. As noted in the NOPR, elimination of the price ceiling for short-term capacity releases will provide more accurate price signals concerning the market value of pipeline capacity. Further, implementation of AMAs will make the capacity release program more efficient as releasing shippers can transfer their capacity to entities with greater expertise both in purchasing low cost gas supplies, and in maximizing the value of the capacity when it is not needed to meet the releasing shipper's gas supply needs. Such arrangements free up the time, expense and expertise involved with managing gas supply arrangements and serve as a means of relieving the burdens of administering their capacity or supply needs.

A. Justification

1. Pursuant to sections 4, 5, and 16 of the NGA, (15 USC 717c - 717o, P.L. 75-688, 52 Stat. 822 and 830), and Title III of the NGPA, (15 USC 3301-3432, P.L. 95-621), a natural gas company must obtain Commission authorization for all rates and charges made, demanded, or received in connection with the transportation or sale of natural gas in interstate commerce. The Commission is authorized to investigate the rates charged by natural gas pipeline companies subject to its jurisdiction. If, after the investigation, the Commission is of the opinion that the

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competition has every reasonable prospect of preventing seriously monopolistic pricing, together with the non-cost advantages cited by the Commission and the experimental nature of this particular "lighthanded" regulation, we find the Commission's decision neither a violation of the NGA, nor arbitrary or capricious." INGAA at 35.

21 734 F.2d 1486 (D.C. Cir. 1984) (Farmers Union).

22 Id. at 33.

rates are "unjust or unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe just and reasonable rates. The NGA also provides the Commission with a means for considering the reasonableness of rates through settlement conferences or hearings.

The information collected under the requirements of FERC-549B "Gas Pipeline Rates: Capacity Information" includes both the Index of Customers (IOC) report under 18 CFR 284.13(c) and capacity reporting requirements under 18 CFR 284.13(b) and 284.13(d). As noted above, this NOPR does not change the requirements since the last OMB renewal.

Under Section 4, of the NGA, rates are established by the pipeline filing for rate changes. The rate thus established continues in effect until the pipeline makes a subsequent rate case filing or the Commission takes action under Section 5 of the NGA and determines that the existing rates are not just and reasonable. Section 16 authorizes the Commission to prescribe the rules and regulations necessary to administer its rates mandates.

CAPACITY REPORTS

On April 4, 1992, in Order No. 636, (RM91-11-000) as noted above, the Commission established a capacity release mechanism under which shippers could release firm transportation

and storage capacity on either a short or long term basis to other shippers wanting to obtain capacity. Pipelines posted available firm and interruptible capacity information on their electronic bulletin boards (EBBs) to inform potential shippers.

On August 3, 1992, in Order No. 636-A (RM91-11-002), the Commission determined through staff audits, that the efficiency of the capacity release mechanism could be enhanced by standardizing the content and format of capacity release information and the methods by which shippers accessed this information, which pipelines posted to their EBBs

On March 29, 1995, through Order 577 (RM95-5-000), the Commission amended §284.243(h) of its regulations to allow shippers the ability to release capacity without having to comply with the Commission's advance posting and bidding requirements.

On February 9, 2000, in Order No. 637, (RM98-10-000), to create greater substitution between different forms of capacity and to enhance competition across the pipeline grid, the Commission revised its capacity release regulations regarding scheduling, segmentation and flexible point rights, penalties, and reporting requirements. This resulted in more reliable capacity information availability and price data that shippers needed to make informed decisions in a competitive market as well as to improve shipper's and the Commission's ability to monitor the market for potential abuses.

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In Orders 581 and 582, issued September 28, 1995 (RM95-4-000 and RM95-3-000), the Commission established the IOC quarterly information requirement The IOC had two

functions, first, for analyzing capacity held on pipelines and second, for providing capacity information to the market. The IOC information aides the capacity release system by enabling shippers to identify and locate those holding capacity rights that the shippers may want to acquire. The information was posted on pipeline EBBs and filed on electronic media (media and format not specifically addressed in this Order) with the Commission. This Order required the reporting of five data elements in the IOC filing: the customer name, the rate schedule under which service is rendered, the contract effective date, the contract termination date, and the maximum daily contract quantity, for either transportation or storage service, as appropriate.

In RM95-4-000, issued February 29, 1996, the Commission, through technical conferences with industry, determined that the IOC data reported should be in tab delimited format on diskette and in a form as proscribed in Appendix A of the rulemaking. In a departure from past practice, a three-digit code, instead of a six-digit code, was established to identify the respondent.

In Order 637, February 9, 2000 (RM98-10-000 and RM98-12-000) the Commission required the following additional information: the receipt and delivery points held under contract and the zones or segments in which the capacity is held, the common transaction point codes, the contract number, a shipper identification number, an indication whether the contract includes negotiated rates, the names of any agents or asset managers that control capacity in a pipeline rate zone, and any affiliate relationship between the pipeline and the holder of capacity. It was stated in the Order that the changes to the Commission's reporting requirements would enhance the reliability of information about capacity availability and price that shippers need to make informed decisions in a competitive market as well as improve shippers' and the

Commission's ability to monitor marketplace behavior to detect, and remedy anti-competitive behavior. In this Order, pipelines were required to post the information quarterly on the pipelines' Internet websites in lieu of on the outdated EBBs.

In the subject NOPR, the Commission is proposing to revise its regulations based upon its review of petitions, comments and available data, in order to lift the price ceiling for short-term capacity release transactions of one year or less. The Commission's capacity release program has created a successful secondary market for capacity.[23] Commenters from disparate segments of the natural gas industry agree that the capacity release program has been beneficial to the industry in creating a competitive secondary market for natural gas transportation. [24]

As the comments point out, shippers and potential shippers are looking for greater flexibility in the use of capacity. They seek to better integrate capacity with the underlying gas transactions, and are looking for more flexible methods of pricing capacity to better reflect the value of that capacity as revealed by the market price of gas at different trading points. Pipelines, for example, have been using their negotiated rate authority to sell their own capacity based on market-derived basis differentials reflective of the difference in gas prices between two points. The Commission recently clarified that pipelines may use such basis differential pricing as a part of negotiated rate transactions even when those prices exceed maximum tariff rates.[25] Under the Commission's regulations, releasing shippers also may enter into capacity release

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23 As the Commission observed in 2005, the "capacity release program together with the Commission's policies on segmentation, and flexible point rights, has been successful in creating a robust secondary market where pipelines must compete on price." Policy for Selective Discounting by Natural Gas Pipelines, 111 FERC ¶ 61,309 at P 39-41)(2005), order on reh'g, 113 FERC ¶ 61,173 (2005).

24 See e.g., PG&E and Southwest Gas Petition at 10 ("There is reason to believe that the secondary market is more competitive today than it was six years ago."); Market Petitioners at 3 ("The Commission's capacity release program has proven to be a critical initiative in opening U.S. natural gas markets to competition."); AGA Comments at 3 ("The Commission's regulations have permitted the development of an open and active secondary market for pipeline capacity that has provided significant benefits to natural gas consumers."); INGAA Comments at 12 ("The current market for short-term transportation capacity is large and highly competitive."); and NGSA Comments at 2 ("The basic structure of the Commission's policies is still providing the benefits intended of transparent, nondiscriminatory, efficient allocation of capacity.").

25 Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

transactions based on basis differentials, but such releases cannot exceed the maximum rate.[26] In their comments, releasing shippers request the ability to release at above the maximum rate so that they may offer potential buyers rates competitive with pipeline negotiated rate transactions.[27]

As the Commission recognized in Order No. 637,[28] the traditional cost-of-service price ceilings in pipeline tariffs, which are based on average yearly rates, are not well suited to the short-term capacity release market.[29] Removal of the price ceiling will enable releasing shippers to offer competitively-priced alternatives to the pipelines' negotiated rate offerings. Removal of the ceiling also permits more efficient utilization of capacity by permitting prices to rise to market clearing levels, thereby permitting those who place the highest value on the capacity to obtain it. Removal of the price ceiling also will provide potential customers with additional opportunities to acquire capacity. The price ceiling reduces the firm capacity holders' incentive to release capacity during times of scarcity, because they cannot obtain the market value of the capacity.

Further, the elimination of the price ceiling for short-term capacity releases will provide more accurate price signals concerning the market value of pipeline capacity. More accurate price signals will promote the efficient construction of new capacity by highlighting the location, frequency, and severity of transportation constraints. Correct capacity pricing information will also provide transparent market values that will better enable pipelines and their lenders to calculate the potential profitability and associated risk of additional construction designed to alleviate transportation constraints.

Moreover, removing the price ceiling on short-term capacity releases should not harm, and may benefit, the "primary intended beneficiaries of the NGA – the 'captive' shippers."[30] Those shippers typically have long-term firm contracts with the pipeline, and therefore will

26 See Standards for Business Practices for Interstate Natural Gas Pipelines and for Public Utilities, Order No. 698, 72 FR 38757 (July 16, 2007), FERC Stats. & Regs. ¶ 31,251 (June 25, 2007).

27 See, e.g., PG&E and Southwest Gas Petition at 10-11.

28 Order No. 637 at 31,271-75.

29 While the Commission offered pipelines the opportunity to propose other types of rate designs, such as seasonal and term-differentiated rates, only a very few pipelines have sought to make such rate design changes, although virtually all pipelines have taken advantage of negotiated rate authority.

30 INGAA at 33.

"continue to receive whatever benefits the rate ceilings generally provide," while also "reaping the benefits of [the] new rule, in the form of higher payments for their releases of surplus capacity."[31]

2. The Commission uses the information collected in these filings to analyze capacity held on pipelines in order to better monitor marketplace behavior, and to detect, and remedy anti-competitive behavior.

The implementation of these reporting requirements improves competition in the market by expanding shippers' information about potential capacity alternatives. Difficulty in obtaining information can reduce competition because buyers may not be aware of potential alternatives and cannot compare prices between those alternatives. The reporting requirements expand shippers' knowledge of alternative capacity offerings by providing more information about the capacity available from the pipeline as well as those shippers holding capacity that is potentially available for release. The reporting requirements further provide shippers with more accurate information about the value of capacity over particular pipeline corridors so that shippers can make more informed choices about the prices of capacity they may wish to purchase.

Further, by collecting this information, the Commission in carrying out its responsibilities under the Natural Gas Act is able to monitor the activities and evaluate transactions of the natural gas industry to ensure competitiveness and to assure the improved efficiency of the industry's operations. Under the section 4(f) of the NGA as created by the Energy Policy Act of 2005, FERC is authorized to ensure adequate customer protections. The Commission's Office of Energy Markets and the Office of the General Counsel will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

Failure by the Commission to collect this information would mean that it is unable to monitor and evaluate transactions and operations of interstate pipelines and perform its regulatory functions.

3. There is an ongoing effort to determine the potential and value of improved information technology to reduce burden. In Order No. 636, the Commission required pipeline companies to establish EBBs to provide shippers with equal and timely access to the information requested under FERC-549B. Shippers were required to post their available capacity on the EBBs for bidding by potential purchasers. In Order No. 581, the Commission required the establishment of the electronic IOC, that it be posted to shippers' EBBs and submitted on diskette, in tab-

31 Id.

delimited format to the Commission. The tab-delimited files are available for download from the Commission's website:

> http://www.ferc.gov/docs-filing/eforms/form-549b/data.asp; hardcopy IOC filings are generated by Commission staff from the tab-delimited data and are available in eLibrary:
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> http://elibrary.ferc.gov/idmws/search/fercgensearch.asp (choose Index of Customer under Class/Type Info).

As noted above, in Order No. 637, the Commission recognized that the majority of pipelines had transferred their information to Internet sites and so to ensure uniformity and efficiency, required that information be posted there, in lieu of to EBBs.

4. Commission filings and data requirements are periodically reviewed in conjunction with OMB clearance expiration dates. This includes a review of the Commission's regulations and data requirements to identify any duplication. To date, no duplication of the proposed data requirements has been found. The Commission staff is continuously reviewing its various filings in an effort to alleviate duplication. There are no similar sources of information available that can be used or modified for use for the purpose described in Item A (1.).

5. These filings impact the day-to-day operations of both major and non-major natural gas pipeline companies. Specific efforts have been made by the Commission to minimize the burden imposed on pipeline companies by requiring only information that is on-hand to them. This is in an effort to impact, as little as possible, normal daily pipeline operations, in order to report this information. The procedural modifications proposed herein should have no significant negative impact on those entities, be they large or small, subject to the Commission's regulatory jurisdiction under the NGA. As previously noted in this submission, removal of the price ceiling will enable releasing shippers to offer competitively-priced alternatives to the pipelines' negotiated rate offerings. A small entity that participates in the market will no longer be constrained by a ceiling price for its unused capacity. Further, removal of the ceiling also permits more efficient utilization of capacity by permitting prices to rise to market clearing levels, allowing those entities that place the highest value on the capacity to obtain it.

6. The Commission and the industry would be placed at a disadvantage by not having available the most current data for competitive and regulatory purposes. Both need access to up-to-date information to monitor the self-implementing pipeline transportation and storage activities that are being carried out in a nondiscriminatory manner.

7. This proposed program meets all of OMB's section 1320.5 requirements. There are no special circumstances requiring this collection to be conducted in a manner inconsistent with Commission regulations in 18 CFR Part 284. All of the capacity and IOC information is made

available on the pipelines' Internet websites. The IOC data is filed with the Commission on diskette. None of this information is filed in hard copy with the Commission.

8. The Commission's procedures require that rulemaking notices be published in the Federal Register, thereby allowing all electric utilities, natural gas pipeline companies, state commissions, Federal agencies, and other interested parties an opportunity to submit views, comments or suggestions concerning the proposal. These rulemaking procedures allow for public conferences to be held as required. Comments are due 45 days from publication in the Federal Register.

On January 3, 2007, the Commission issued a request for comments on the current operation of the Commission's capacity release program and whether changes in any of its capacity release policies would improve the efficiency of the natural gas market.[32] The Commission's request for comments was in part in response to the petitions discussed below.

In October 2006, a group of large natural gas marketers[33] (Marketer Petitioners) requested clarification of the operation of the Commission's capacity release rules in the context of asset (or portfolio) management services.[34] An AMA is an agreement under which a capacity holder releases, on a pre-arranged basis, all or some of its pipeline capacity, along with associated gas purchase contracts, to an asset or portfolio manager. The asset manager uses the capacity to satisfy the gas supply needs of the releasing shipper, and, when the capacity is not needed to serve the releasing shipper, the asset manager uses it to make gas sales or re-releases the capacity to third parties.

The Marketer Petitioners stated that Order No. 636 adopted the capacity release program as a means for shippers to transfer unneeded capacity to other entities who desired it. However, the Marketer Petitioners state, today many local distribution companies (LDCs) and others desire to release their capacity to a replacement shipper (asset manager) with greater market expertise, who will continue to use the capacity to provide gas supplies to the releasing shipper and will be better able to maximize the value of the released capacity when it is not needed to serve the releasing shipper. The Marketer Petitioners stated that the Commission's current

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32 Pacific Gas & Electric Co., 118 FERC ¶ 61,005 (2007).

33 Coral Energy Resources, LP; ConocoPhillips Co.; Chevron USA, Inc.; Constellation Energy Commodities Group, Inc.; Tenaska Marketing Ventures; Merrill Lynch Commodities, Inc.; Nexen Marketing USA, Inc.; and UBS Energy LLC.

34 The Marketer Petitioners originally filed their petition in Docket Nos. RM91-11-009 and RM98-10-013. However, the Commission has re-docketed the petition in Docket No. RM07-4-000.

capacity release rules may interfere with marketers providing efficient asset management services. They also asserted that they are not seeking to remove the capacity release rate cap, but acknowledged that if the Commission took such action, it would eliminate some of their problems.

In response to the price ceiling issues, commenting LDCs and pipelines both advocated lifting the ceiling, subject to different conditions. The LDCs favor lifting the ceiling only if it would still apply to the pipeline's direct sales of capacity because, among other things, the pipelines have negotiated rate authority that is not available to releasing shippers.[35] The pipelines advocated the removal of the cap only if the Commission removes the cap from the entire capacity marketplace; otherwise, they argued, it will create a bifurcated market and an uneven playing field.

In addition to the issues raised by the petitions, the Commission also included in its request for comments a series of questions asking whether the Commission should lift the price ceiling, remove its capacity release bidding requirements, modify its prohibition on tying arrangements, and/or remove the shipper-must-have-title requirement.

Producers and industrial customers generally oppose lifting the price ceiling on a permanent basis, arguing that the Commission must first develop new data to support such action and that it cannot rely on the results of the Order No. 637 experiment that terminated five years ago. Certain producers, however, would countenance a new experiment conducted by the Commission to gather new data related to the lifting of the price ceiling. Additionally, certain marketers and the American Public Gas Association (APGA) argued that the Commission cannot remove the ceiling unless there is a finding of lack of market power.

In response to the request for comments on whether the Commission should consider adjusting the capacity release regulations to foster AMAs, numerous commenters responded that AMAs are beneficial to the market place and that the Commission should do something to facilitate their use. A vast majority of the commenters asserted that AMAs provide substantial benefits, including more load responsive use of gas supply, greater liquidity, increased use of transportation capacity, cost effective procurement vehicles for LDCs and other end users, and

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35 Under the negotiated rate program, a pipeline may charge rates different from those set forth in its open access tariff, as long as the shipper has recourse to taking service at the maximum tariff rate. See, Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 74 FERC ¶ 61,076, reh'g denied, 75 FERC ¶ 61,024 (1996), petitions for review denied sub nom., Burlington Resources Oil & Gas Co. v. FERC, 172 F.3d 918 (D.C. Cir. 1998). See also Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy, 104 FERC ¶ 61,134 (2003), order on reh'g and clarification, 114 FERC ¶ 61,042, dismissing reh'g and denying clarification, 114 FERC ¶ 61,304 (2006).

the enhancement of competition. They stated that AMAs also relieve LDCs from management of their daily gas supply and capacity needs. Others commented that AMAs benefit all parties involved: the releasing shipper reduces its costs through use of its capacity entitlements to facilitate third party sales; the third parties benefit from receiving a bundled product at an acceptable price; and the asset manager receives whatever profits are not passed on to the releasing shipper.

In particular, the Marketer Petitioners and other commenters requested that the Commission clarify that the different payments made between parties in an AMA do not constitute prohibited above maximum rate transactions or below maximum rate transactions that thus require posting and bidding. They also requested that the Commission revisit its prohibition on tying to allow the packaging of gas supply contracts and pipeline or storage capacity, or multiple segments of capacity, as part of an AMA. Certain commenters also suggested changes to the Commission's notice and bidding requirements for capacity releases. A number of LDCs and marketers requested that the bidding requirement be eliminated altogether or that the regulations be revised to eliminate bidding for capacity releases made to implement an AMA.

9. There are no payments or gifts to respondents in the proposed rule.

10 and 11. The Commission generally does not consider the data filed to be confidential. There are no questions of a sensitive nature associated with the provisions proposed in the subject NOPR. Specific requests for confidential treatment to the extent permitted by law will be entertained pursuant to 18 C.F.R. Section 388.110.

12. As noted above there are no changes to the requirements as proposed in the subject NOPR and therefore the reporting burden estimate will remain the same as stated in the Commission's renewal submission.

13. The estimated average annualized cost to respondents will remain unchanged.

14. The estimated annualized cost to the Federal government related as proposed in the subject NOPR will remain unchanged from the Commission's prior renewal submission.

15. See reasons for program change in Background section above. As stated above, the changes in this NOPR will not result in program changes or adjustments.

16. The results of this information collection are not published by the Commission. However, the capacity and IOC information is posted on the pipelines' Internet websites for public disclosure.

17. It is not possible to display the OMB approval expiration date for this information collection because the information is not collected on a standard, preprinted form which would avail itself to this display. However, the electronic filing instruction manual and the instructions for posting the IOC information on the pipelines' Internet websites does contain both the OMB control number and expiration date.

18. Not applicable. The Commission does not use either the capacity reports or the IOC information for statistical purposes.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This is not an information collection employing statistical methods.